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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/806,810	04/02/2001	Jukka Penttinen	513-3PCT/US	6010
23869	7590	08/30/2005	EXAMINER	
HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791			FISCHER, ANDREW J	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 08/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/806,810	PENTTINEN, JUKKA	
	<b>Examiner</b>	<b>Art Unit</b>	
	Andrew J. Fischer	3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 20 June 2005.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-12 and 14-19 is/are pending in the application.  
4a) Of the above claim(s) 1-3 is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 4-12 and 14-19 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date .  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_

## **DETAILED ACTION**

### *Acknowledgements*

1. Applicant's amendment filed June 16, 2005 is acknowledged. Accordingly, claims 1-12 and 14-19 remain pending.
2. Claims 1-3 were withdrawn from further consideration pursuant to 37 C.F.R. §1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made with traverse in the reply filed on January 14, 2004.
3. All references in this Office Action to the capitalized versions of "Applicant" refers specifically the Applicant of record. References to lower case versions of "applicant" or "applicants" refers to any or all patent "applicants." Unless expressly noted otherwise, references to "Examiner" in this Office Action refers to the Examiner of record while reference to or use of the lower case version of "examiner" or "examiners" refers to examiner(s) generally.
4. This Office Action is written in OACS. Because of this, the Examiner is unable to control formatting, paragraph numbering, font, spelling, line spacing, and/or other word processing issues. The Examiner sincerely apologizes for these errors.

### *Specification*

5. The specification is objected to because of the following informalities: The references to particular claims in the specification is objected to.

### *Claim Objections*

6. Claims 5-13 and 14-19 are objected to because of the following informalities:

- i. It is believed Applicant intends to begin the claims 'The apparatus' and not simply "Apparatus . . ." Appropriate correction is required.

***Claim Rejections - 35 USC §112 2<sup>nd</sup> Paragraph***

7. The following is a quotation of the 2<sup>nd</sup> paragraph of 35 U.S.C. §112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 4-12 and 14-19 are rejected under 35 U.S.C. §112, 2<sup>nd</sup> paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. In claim 4, the scope of the claim remains unclear. Applicant begins the claim by stating "Apparatus" as if all the limitations following this term are inclusive of the apparatus. However the body of the claim indicates that the "telecommunications unit (5) is used to remotely control at lease one or more of the functions of the apparatus . . ." The question then becomes is telecommunications unit (5) part of the overall apparatus?

However the body of the claim say 'no' because the telecommunications unit (5) would be controlling itself. Because the preamble conflicts with the body of the claim and the it is unclear what specifically makes up "the apparatus," the scope is indefinite.

b. The same arguments apply to claim 9. Is the "system" in claim 9 a separate system outside the scope of the "apparatus" in claim 1 or, alternatively, is it a sub-system of the overall apparatus in claim 1?

9. The Examiner finds that because the claims are indefinite under 35 U.S.C. §112 2<sup>nd</sup> paragraph, it is impossible to properly construe claim scope at this time. See *Honeywell*

*International Inc. v. ITC*, 68 USPQ2d 1023, 1030 (Fed. Cir. 2003) (“Because the claims are indefinite, the claims, by definition, cannot be construed.”). However, in accordance with MPEP §2173.06 and the USPTO’s policy of trying to advance prosecution by providing art rejections even though these claim are indefinite, the claims are construed and the art is applied *as much as practically possible*.

### ***Claim Rejections - 35 USC §102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States. . . .

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 4, 5, 7-9, 11, 12, 14-19, as understood by the Examiner, are rejected under 35 U.S.C. §102(e) as being anticipated by Mansbery et. al. (U.S. 6,121,593) (“Mansbery”).

Mansbery discloses a single integrated assembly a cold storage space (refrigerated space); a heating unit 11; a control centre 20; a user interface comprising a monitor 22 and a keyboard 23; a communications unit 25 which is connected to a communications network (connected to the Internet) is used to remotely control (via 26) at least one or more of the same functions of the apparatus as performed by the control center and user interface; the telecommunications unit serves to provide communication with a supplier of food portions (the user since the remote user

is the one who initially placed the objects within the refrigerator/oven) and a failure monitoring part (software where the remote user can monitor and determine if *e.g.* the temperature is above a particular threshold; a data processing section (CPU with 21).

12. Claims 4, 7-9, 14, and 15, as understood by the Examiner, are alternatively rejected under 35 U.S.C. §102(e) as being anticipated by Porter (U.S. 5,774,053). Porter discloses the claimed invention including using the remote to control the same function as performed by the unit's control center (*i.e.* providing physical access to the enclosure).

#### ***Claim Rejections - 35 USC §103***

13. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 4, 5, 7-9, 11, 12, 14-19, as understood by the Examiner, are alternatively rejected under 35 U.S.C. §103(a) as being unpatentable over Mansbery.<sup>1</sup> It is the Examiner's principle position that the claims are anticipated because of the function performed is inherent. However if not inherent, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Mansbery to expressly state that one of the functions is the same as the function performed by the user interface. Such a modification would

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<sup>1</sup> See MPEP §2112 expressly authorizing alternative §102/§103 rejections when the question of inherency is present in the anticipation rejection.

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have disclosed that which is inherent. Additionally, such a modification would have allowed a user who was *not* remote to also use the system.

15. Claims 4-12 and 14-19 are also rejected under 35 U.S.C. §103(a) as being unpatentable over Kumpfer (U.S. 4,398,651) in view of May (U.S. 6,080,972). Kumpfer disclosed the claimed invention including remote telephone 70 which enables the inventory and various conditions, such as storage compartment temperature, to be determined from a remote location via a land-line such as public telephone, or by other communications link such as radio. C7, ~L49-55. Although Kumpfer discloses how remote telephone 70 is used to monitor and/or control 10, Kumpfer does not *directly* disclose a telecommunications unit.

May expressly teaches a modem for remote telephone connection. Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Kumpfer as taught by May to use a modem to connect Kumpfer's device to remote telephone 70. Such a modification would have expanded the possible features the remote device could perform. Those additional features are one or more of the following: (1) monitor the current cooking progress while the controller is using a preprogrammed cooking sequence, (2) modify the current preprogrammed cooking sequence, (3) create a new programmed sequence, (4) hold, stop or restart the cooking cycle, (5) delete a current operating sequence, (6) replace a current sequence or (7) initiate the newly created replacement sequence.

16. Claims 4-12 and 14-19 are also rejected under 35 U.S.C. §103(a) as being unpatentable over Anderson et. al. (U.S. 4,592,485) ("Anderson") in view of May. Anderson disclosed the claimed invention but does not directly disclose a telecommunications unit.

May expressly teaches a modem for remote telephone connection. Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made

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to modify Anderson as taught by May to use a modem to connect Kumpfer's device to remote telephone 70. Such a modification would have expanded the possible features the remote device could perform.

17. It is the Examiner's factual determination that controlling a first computer with a second computer via the Internet or other network is old and well known in the art. See *e.g.* Huntsman (U.S. 5,801,689); Nichols et. al. (U.S. 6,138,150); and Heller et. al. (U.S. 6,119,146).

18. It is the Examiner's factual determination that remotely controlling appliances is old and well known in the art. For remotely controlling ovens, see *e.g.* May (U.S. 6,080,972). For remotely controlling refrigerators, see *e.g.* Sandelman (U.S. 6,026,651).

19. It is the Examiner's factual determination that Gavron discloses a typical graphical user interface of a computer operating system that is old and well known in the art.

20. For due process purposes and because Applicant has not objectively indicated and redefined claim limitation(s) to have meanings other than their ordinary and accustomed meanings, the Examiner confirms that Applicant has decided not to be his own lexicographer. To support this position, the Examiner again notes the following factual findings as first discussed in the previous Office Actions.<sup>2</sup> First, the Examiner has again carefully reviewed the specification and prosecution history and can not locate any lexicographic definition(s). Second, the Examiner finds that not only has Applicant not pointed to definitional statements in his specification or prosecution history, Applicant has also not pointed to a term or terms in a claim

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<sup>2</sup> See the "First Non Final Office Action" mailed February 12, 2004, Paper No. 6, Paragraph No. 18; and the "First Final Office Action" mailed October 19, 2004, Paper No. 10122004, Paragraph No. 12.

with which to draw in those statements<sup>3</sup> with the required clarity, deliberateness, and precision.<sup>4</sup>

Third, after receiving express notice of the Examiner's position that lexicography is *not* invoked,<sup>5</sup> Applicant's three (3) responses have not pointed out the "supposed errors" in the Examiner's position regarding lexicography invocation in accordance with 37 C.F.R. §1.111(b) (*i.e.* Applicant did not argue lexicography *was* invoked). Forth and to be sure of Applicant's intent, the Examiner also notes that Applicant has declined the Examiner's express invitation<sup>6</sup> to be his own lexicographer. Finally, after receiving express notice of the preceding factual findings and conclusions, Applicant's latest response again fails to point out the supposed errors in the Examiner's position regarding lexicography invocation in accordance with 37 C.F.R. §1.111(b). Moreover, Applicant's latest response—while fully considered by the Examiner—has not changed the Examiner's reasonable conclusion that Applicant has decided not to be his own lexicographer. Therefore (and unless expressly noted otherwise by the Examiner), the

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<sup>3</sup> "In order to overcome this heavy presumption in favor of the ordinary meaning of claim language, it is clear that a party wishing to use statements in the written description to confine or otherwise affect a patent's scope must, *at the very least*, point to a term or terms in the claim with which to draw in those statements. [Emphasis added.]" *Johnson Worldwide Assocs. v. Zebco Corp.*, 175 F.3d 985, 989, 50 USPQ2d 1607, 1610 (Fed. Cir. 1999).

<sup>4</sup> "The patentee's lexicography must, of course, appear 'with reasonable clarity, deliberateness, and precision' before it can affect the claim." *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1249, 48 USPQ2d 1117, 1121 (Fed. Cir. 1998) citing *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994).

<sup>5</sup> See Note 2.

<sup>6</sup> See *e.g. Fuji Photo Film Co. v. ITC*, 386 F.3d 1095, 72 USPQ2d 1769, 1773 (Fed. Cir. 2004) (noting that applicants' failure to correct the examiner's characterization of an element of claim interpretation is nevertheless an indication of how a claim should be interpreted since applicant declined the examiner's express invitation to correct a possible error in claim interpretation: "applicant's attention was called to the examiner's interpretation of [how the element was interpreted by the examiner, and] applicant was invited to correct the examiner's interpretation—an invitation the applicant did not accept.")

heavy presumption in favor of the ordinary and accustomed meaning for claim terminology is again confirmed. Accordingly, the claims continue to be interpreted with their “broadest reasonable interpretation,” *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997), and the Examiner continues to rely heavily and extensively on this interpretation.<sup>7</sup>

21. Under the broadest reasonable interpretation standard noted above and unless expressly modified in this Office Action, the Examiner maintains his interpretations including the statements and/or definitions of claim limitations as noted in previous Office Action. Those previous definitions are part of the administrative record and, in accordance with *In re Morris*, are provided simply as a factual source to support the Examiner’s claim interpretations (and ultimately the Board of Patent Appeals and Interferences claim interpretations if necessary<sup>8</sup>) during ex parte examination.

#### *Response to Arguments*

22. Applicant’s arguments filed April 20, 2005 have been fully considered but they are not persuasive.

23. Applicant states that “Kumpfer ‘651 reference does not teach or suggest a device controlled by a telecommunications unit or that the device is remotely controlled.”<sup>9</sup> The

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<sup>7</sup> See 37 C.F.R. §1.104(c)(3) which states in part: “the examiner may rely upon admissions by applicant . . . as to *any matter* affecting patentability . . . . [Emphasis added.]”

<sup>8</sup> See *Gechter v. Davidson*, 116 F.3d 1454, 1460, 43 USPQ2d 1030, 1035 (Fed. Cir. 1997) (“[W]e hold that the Board is required to set forth in its opinions specific findings of fact and conclusions of law adequate to form a basis for our review.”).

<sup>9</sup> Applicant’s Remarks/Arguments filed April 20, 2005, Page 5, last ¶.

Examiner agrees. Applicant next states that “Kumpfer ‘651 reference does not teach or suggest that the device itself is actuated by the telecommunications unit connection or the land line.”<sup>10</sup>

Again the Examiner agrees. The Examiner agrees since the Examiner expressly stated in the rejection that “Kumpfer disclosed the claimed invention but does not directly disclose a telecommunications unit.”

24. Applicant also states that “Kumpfer ‘651 reference . . . is not an apparatus for processing food portions as fined in the claims of the present invention.”<sup>11</sup> The Examiner notes that “for processing food portions” simply the intended use of the claimed invention. However to be entitled to patentable weight, a recitation of the intended use of the claimed invention must result in additional steps or in a manipulative difference in the steps of the claim. See e.g. *Bristol-Myers Squibb Co. v. Ben Venue Laboratories, Inc.*, 246 F.3d 1368, 1375-76, 58 USPQ2d 1508, 1513 (Fed. Cir. 2001) (Where the language in a method claim states only a purpose and intended result, the expression does not result in a manipulative difference in the steps of the claim and is therefore not entitled to patentable weight. Applicants are also reminded of *how* to determine whether the preamble is considered limiting:

In general, a preamble limits the invention if it recites essential structure or steps, or if it is necessary to give life, meaning, and vitality to the claim. Conversely, a preamble is not limiting where a patentee defines a structurally complete invention in the claim body and uses the preamble only to state a purpose or intended use for the invention.” *Catalina Marketing International Inc. v. Coolsavings.com Inc.*, 289 F.3d. 801, 808, 62 USPQ2d 1781, 1784-85 (Fed. Cir. 2002) (citations and quotations omitted).

25. In this particular case, the Examiner finds that “for processing food portions” does not recite essential steps since its in effect, simply stating an end result. To support this position, the

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<sup>10</sup> Id., Page 6, 1st ¶.

Examiner notes that if “for processing food portions” was removed from the preamble, the scope of the claim would remain the same. The Examiner therefore finds that based upon the plain meaning of the claim terms themselves, Applicant defines a structurally complete invention in the claim body and uses the preamble only to state a purpose or intended use for the invention. Applicant’s arguments are therefore not persuasive.

26. Applicant’s arguments with respect to the claims have been considered but are moot in view of the new grounds of rejection.

### ***Conclusion***

27. References considered pertinent to Applicant’s disclosure are listed on form PTO-892.

All references listed on form PTO-892 are cited in their entirety.

28. The following two (2) citations to the Manual of Patent Examining Procedure (“MPEP”) apply to this Office Action: MPEP citations to Chapters 100, 200, 500, 600, 700, 1000, 1100, 1300, 1400, 1500, 1700, 1800, 2000, 2100, 2200, 2500, 2600, and 2700 are from the MPEP 8<sup>th</sup> Edition, Rev. 2, May 2004. All remaining MPEP citations are from MPEP 8<sup>th</sup> Edition, August 2001.

29. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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<sup>11</sup> Id.

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30. Applicant is reminded that patents are written by and for skilled artisans. See *Vivid Technologies, Inc. v. American Science and Engineering, Inc.*, 200 F.3d 795, 804, 53 USPQ2d 1289, 1295 (Fed. Cir. 1999) (“patents are written by and for skilled artisans”). The Examiner therefore starts with the presumption that Applicant is a skilled artisan who possess at least ordinary skill in the art. Consequently, it is the Examiner’s position that because the patent references of record are directed to those with ordinary skill in this art, these references are clear, explicit, and specific as to what they teach. Nevertheless some applicants apparently have difficulty understanding the references. In an effort to maintain compact prosecution, provide due process, and to help these applicants understand the contents of a reference when viewed from the position of one of ordinary skill in this art, Applicants are hereby given actual notice that if after reasonably reading any reference of record, if Applicant can not reasonably understand or if Applicant has difficulty comprehending one or more sentence(s), statement(s), diagram(s), or principle(s) set forth in one or more of the reference(s) of record, Applicant should (in his next appropriately filed response) bring this issue to the attention of the Examiner. In addition to bringing this issue to the attention of the Examiner, and in accordance with 37 C.F.R. §1.111(b), Applicant’s response must also state *why* he either does not understand or has difficulty comprehending the reference. If after receiving both Applicant’s request for understanding and the reasons as to *why* the request is made—and assuming the reference is germane to at least one outstanding rejection—the Examiner may either provide a substitute reference, or alternatively, do his best to elucidate the particular sentence(s), statement(s), diagram(s), or principles(s) at issue in a reasonable manner.

31. In accordance with the USPTO’s goals of customer service, compact prosecution, and reduction of cycle time, the Examiner has made every effort to clarify his position regarding

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claim interpretation and any rejections or objections in this application. Furthermore, the Examiner has again provided Applicants with notice—for due process purposes—of his position regarding his factual determinations and legal conclusions. The Examiner notes and thanks Applicant for his “Remarks/Arguments” (beginning on page 5) traversing the Examiner’s positions on various points. If Applicant disagrees with any additional factual determination or legal conclusion made by the Examiner in this Office Action whether expressly stated or implied,<sup>12</sup> the Examiner respectfully reminds Applicant to properly traverse the Examiner’s position(s) in accordance with 37 C.F.R. §1.111(b) in his next properly filed response. By addressing these issues now, matters where the Examiner and Applicant agree can be eliminated allowing the Examiner and Applicant to focus on areas of disagreement (if any) with the goal towards allowance in the shortest possible time. If Applicant has any questions regarding the Examiner’s positions or has other questions regarding this communication or even previous communications, Applicant is strongly encouraged to contact Examiner Andrew J. Fischer whose telephone number is (571) 272-6779. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner’s immediate supervisor, Alexander Kalinowski, can be reached at (571) 272-6771. The fax number for facsimile responses is now (571) 273-8300.

A handwritten signature in black ink that reads "AJ Fischer 8/25/05". The signature is fluid and cursive, with "AJ Fischer" on the first line and "8/25/05" on the second line to the right.

Andrew J. Fischer  
Primary Examiner  
Art Unit 3627

AJF  
August 25, 2005

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<sup>12</sup> E.g., if the Examiner rejected a claim under §103 with two references, although not directly stated, it is the Examiner’s implied position that the references are analogous art.